

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

BRIAN CONERLY, et al.,
INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED

PLAINTIFFS

v.

Civil Action No. 2:06cv205-KS-MTP

MARSHALL DURBIN FOOD CORPORATION

DEFENDANT

ORDER

THIS MATTER came before the court on Plaintiff's *ore tenus* motion to amend this court's February 6, 2009 Order [247]. A telephonic status conference was held on February 26, 2009 to address issues raised by the parties regarding the second Rule 34 plant inspection ordered [247] by the court on February 6, 2009 and scheduled to take place on February 26 and 27, 2009. During the conference, Plaintiffs expressed concerns regarding their experts' ability to complete their review of the plant operations. Good cause having been shown by Plaintiffs, the court finds it appropriate to grant Plaintiffs' *ore tenus* motion to amend the court's February 6, 2009 Order [247] and to permit additional inspection of the plant as follows:

1. Plaintiffs' attorneys and experts may enter the plant at 9:00 p.m. on February 26, 2009 and may remain for 12 hours to conduct an additional inspection; they may inspect the plant between 5:30 and 9:30 a.m. on March 2, 2009; and they may inspect the plant for an additional hour on the afternoon of March 2, 2009. This afternoon inspection shall begin between 2:30 and 3:30 p.m., depending on when the first processing shift ends. Defendant shall provide Plaintiffs with thirty minutes advance notice of when the shift will be ending.

2. The additional inspections allowed herein shall be conducted in accordance with the conditions and limitations set forth in the court's previous Orders [247] [261].

3. The court finds no basis to impose sanctions on either party, as Plaintiffs' inability to complete their inspection is more a function of its scope and scale, rather than the fault of either party. Thus, each party shall bear its own additional attorney or expert fees, if any, incurred as a result of the extended inspection.

4. The parties are reminded of their duty to confer in good faith and attempt to resolve their discovery disputes prior to seeking this court's intervention.

SO ORDERED this the 27th day of February, 2009, *nunc pro tunc* to February 26, 2009.

s/ Michael T. Parker

United States Magistrate Judge